BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application of San Gabriel Water Company, Fontana District (U337W) for authority to increase rates charged for water service in its Fontana Water Company Division to increase revenues by: $11,573,200 or 39.1% in 2003, $3,078,400 or 7.3 % in 2004, $3,078,400 or 6.8% in 2005, $3,079,900 or 6.4 % in 2006.	Application No. 02-11-044 (Filed November 25, 2002)

COMMENTS OF THE OFFICE OF RATEPAYER ADVOCATES ON THE PROPOSED DECISION OF ADMINISTRATIVE LAW JUDGE PATRICK RESOLVING GENERAL RATE CASE

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I. INTRODUCTION AND SUMMARY OF RECOMMENDATIONS

Pursuant to Rule 77.1 of the Commission's Rules of Practice and Procedure, the Office of Ratepayer Advocates (ORA) submits these Comments to the Proposed Decision of Administrative Law Judge (ALJ) Patrick. The Proposed Decision (PD) resolves the General Rate Case (GRC) application of the San Gabriel Valley Water Company (SGVWC) for its Fontana Division. Below, ORA addresses some of the legal and factual errors in the ALJ's Decision; silence on any issue should not be interpreted as assent.

II. DISCUSSION

A. Proposed Rate Base Cap

The ALJ's Proposed Decision (PD) gives blanket approval to the list of projects of contained in Exhibit 54, San Gabriel's Project Priority List of various possible, competing plant additions proposed to be implemented over the years 2003 through 2006.

(PD, p.12.) The PD proposes a rate base cap of 10% per year, allowing SGVWC to build whatever it wants from Exhibit 54 up to 10% of existing rate base per year. This approach is bad policy, and constitutes legal error for several reasons.

First, the PD states, "there is a presumption that the utility's investment in the planned capital projects is reasonable"; in other words, in one broad stroke it finds that all of the projects listed on Exhibit 54 are reasonable, without carefully considering each proposed project. This finding goes beyond the evidence in the record, in effect approving a long list of projects that may be ill-advised, redundant and unnecessary. Nothing in the record demonstrates the reasonableness of any particular project. It is legal error to find that all of the projects are reasonable, without considering the rate impact or need of any particular plant addition.

Second, the record does not support a finding that any of the projects are needed. At no time did SGVWC ever have a water shortage. The evidence demonstrates that at all times SGVWC met its existing water needs[1]. On the hottest, driest days of the year, SGVWC's maximum usage days, the companies' total water production capacity matched its usage, although barely. This justifies building a small amount of extra capacity – ORA approves of building one new well in order to ensure existing needs are met. There is no justification for approving an "ambitious program" (PD, p.12) of new wells, surface water treatment facilities, reservoirs, etc. Approval of an "ambitious program" of new construction for a need that has not been demonstrated constitutes legal error.

Third, Exhibit 54 is a short abbreviated list of projects, and it does not provide any details of the costs, materials, or need for any particular project. By giving approval to this list of capital projects, the Commission would be allowing projects to be built that it

[1] SGVWC reported to the Department of Water Resources in 2002 that "Sufficient water supply and system capacity are available to produce two to three times current production quantities." (Exhibit 107.) SGVWC further reported to DWR that "the Company already has designed and constructed water system infrastructure, including water production, treatment, storage, transmission, and distribution facilities capable of supporting service to additional customers in the Company's service area…" (Id.) SGVWC also informed DWR that it has not experienced "regular or frequent supply deficiencies". (Id.)

does not know the costs of, extent of, or need for. In effect, the Commission would abrogate its duty to perform a review of the projects contained on Exhibit 54[2]. The record does not support a finding that the list of capital projects on Exhibit 54 are reasonable, because there is simply insufficient description of what these projects are. In effect, the Commission would be giving SGVWC "carte blanche" to build whatever it wants[3].

Fourth, the rate base cap is based on factual errors – that SGVWC's Fontana Division has a typical growth rate of "$10.2 million per year for plant additions." (PD, p.14.) Rate base is not the same as "plant additions", yet the PD uses the increase in plant additions to justify an increase in rate base. For example, the $10.2 million in plant additions fails to account for advances and contributions in aid of construction. Further, the PD ignores the fact that the company has already engaged in an ambitious program of new construction, which inflated its rate base way beyond historical levels, and created significant new water production capacity. For example, in 2002 plant additions to rate base increased almost 100% from the previous year; from $7,931,503 in 2001 to $14,521,960 in 2002. However, customer growth has grown less than 2% per year in recent years, and per customer usage has not increased. (Exhibit 17, pp.6-7.) Unfortunately, these factual errors form the basis for the ALJ's decision to award SGVWC with a 10% rate of rate base growth per year.

Finally, the figure of a 10% rate base cap on future plant additions is arbitrary, capricious, and without support in the record. There is no justification for the figure of 10% as the cap for rate base growth. Why not 9%, or 8%? Nothing in the record supports such high historical growth rates, nor does the record support that SGVWC's future population growth or water usage growth will be anywhere near 10%. Also, it should be noted that a large portion of the $10.2 million in plant additions per year is as a

[2] The blanket approval would also raise questions as to how the Commission's Water Division would perform its review of advice letters from SGVWC, which the company is directed to file in some cases.

[3] The Commission should be especially concerned by the PD's statement, "we will allow San Gabriel to

(continued on next page)

result of the funds received from the County of San Bernardino for new treatment facilities, which, as discussed in detail below, is not properly a rate base item. Therefore, the figure of 10% is legal error, and without support in the record.

In effect, the PD's rate base cap proposal would give blanket approval to an "ambitious program" of new construction, without sufficient or appropriate review, and without an adequate affirmative showing by the company, and thus constitutes legal error. ORA recommends that the Commission reject the rate base cap proposal, and adopt a case-by-case approach, requiring SGVWC to demonstrate the need for each new capital project, and to describe each proposed new project with sufficient detail that the Commission can properly assess the appropriateness of allowing any of them to be added to rate base.

B. Funds For The Construction, Operation, And Maintenance Of Treatment Facilities At Plant F10 Provided By The County Of San Bernardino To SGVWC Pursuant To A Settlement Agreement Relating To Groundwater Contamination

The PD commits significant legal error in its treatment of the funds received from the County of San Bernardino for the construction, operation, and maintenance of treatment facilities for the removal of groundwater contamination at Plant F10. The PD fails to describe the history of this plant, which needs to be recounted here:

Plant F10 consists of three groundwater wells, and was the subject of a lawsuit between SGVWC and the County of San Bernardino. The County assumed responsibility for contamination from volatile organic compounds (VOCs) in the groundwater supply in the Fontana area (specifically, the Chino Basin), where F10 is located. A settlement agreement was reached in 1998, whereby the County agreed to pay for the costs of constructing perchlorate removal facilities at F10, the costs of replacement water, and ongoing operation and maintenance costs. The settlement

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make changes and substitutions for the projects shown on Exhibit 54." (PD, p.14.)

agreement is part of the record. (Exhibit 24.) Attachment A to the settlement agreement describes in detail the facilities that the County was required to construct at Plant F10, including dollar amounts that were to be paid by the County. Attachment E to Exhibit 8 also shows that money was received from the County of San Bernardino and reinvested in utility plant at F10.

The settlement agreement (Exhibit 24) further shows that the County was expected to pay SGVWC $2.4 million for "Damages" through October 31, 1998, and another $1.6 million for damages after October 31, 1998, to December 31, 1999, the date the company expected F-10 to be restored to full service. In addition, the County was to pay for Plant F10 "Remediation", of $3.99 million.

The settlement agreement also shows that SGVWC expects to receive funds on a monthly basis to offset some of the operational costs relating to the wellhead treatment. SGVWC did not disclose in its application this source of revenue, the basis for determining the amount to be paid by the County, the agreement signed, or the amounts it has received in relation to this in previous periods. SGVWC's Rebuttal testimony provided no satisfactory explanation for the treatment of these funds, other than admitting that the funds were not disclosed and stating that the funds were distributed to shareholders because they were "uniquely at risk", which is not a sufficient explanation. (Prepared Rebuttal Testimony of David M. Batt, Exhibit 8.)

The PD in effect "throws its hand up" and makes no effort to properly account for the inverse condemnation proceeds received by SGVWC from the County. The PD states "this matter should be addressed more thoroughly in Fontana Division's next GRC, where a full record needs to be developed." (PD, p.45.) The PD does not say why it considers the current record insufficient to make a determination.

ORA attempted to account for the cash received from the County by making a negative Working Cash allowance. The PD rejects this treatment, but makes no effort to create its own accounting mechanism. The result is that the PD *allows the Plant F10 treatment facilities to be placed in rate base*. In other words, the PD allows SGVWC to recover the costs of the new Plant F10 facilities from ratepayers, even though the

company already received money from the County of San Bernardino for the construction of Plant F10, and continues to receive money for its operation and maintenance. This is significant legal error, and results in the company being allowed to double-collect millions of dollars.

This error is compounded throughout the PD – and will be discussed further below. ORA strongly recommends that the Commission not adopt the PD's treatment of the funds receive for inverse condemnation from the County of San Bernardino[4]. Otherwise, ratepayers will be paying for facilities that have already been paid for, at a cost of millions of dollars.

ORA recommends a negative Working Cash allowance, since the funds from the County are not advances or contributions in aid of construction; however, the Commission has broad discretion to ensure that ratepayers are not over-burdened with unreasonable and unnecessary expenses, and ORA urges the Commission to consider whatever appropriate accounting mechanism for these funds that would prevent double-recovery by SGVWC's shareholders.

The PD's two fundamental errors, the factual error that SGVWC has suffered water shortages and thus needs to undertake an "ambitious program" of new construction, and also the legal error that the company is allowed to put Plant F10 into rate base and not account for the funds received from the County to build and operate F10, create problems throughout the body of the PD resulting in much higher rates for customers, and will be discussed below.

C. Burden of Proof

Although the applicant has the burden of proof on every issue, the PD repeatedly fails to consider whether the company has provided sufficient evidence to carry its

[4] It is interesting to note that the amount of the shareholder dividend paid out in 1999 was almost identical to the amount paid by the County of San Bernardino in condemnation proceeds initially in 1998 ($4,610,555 in 1998, according to Attachment E of Exhibit 8; SGVWC paid a "special dividend" of $4,960,000 in 1999 (Hr. Tr., 495:11-16.)) This leads to the reasonable conclusion that the shareholders received the proceeds

burden of proof. Examples are discussed in more detail below – but it should be noted that the PD repeatedly accepts the claims made by the company without any evidence in the record. The most glaring example is the issue of water shortages – the PD accepts water shortages as a fact without any evidence in the record. Thus, the PD impermissibly shifts the burden of proof to ORA to prove that expenses (for example) are unreasonable rather than the applicant having to prove that the expenses are reasonable, or that new positions are not necessary, rather than the company having to prove that new positions are necessary.

III. WATER SALES AND OPERATING REVENUES

A. Service Connections

The PD accepts SGVWC's estimates for new service connections "since, apparently, ORA double-counted two large customers." (PD, p.14.) Strangely, the PD does not explain how the double-counting occurred, or where this is supported in the record. ORA could not have double-counted large customers, because ORA uses the historical consumption numbers for the large industrial customers provided by SGVWC and also used by SGVWC's modified Bean method analysis. The only difference is that ORA includes recorded 2002 numbers whereas SGVWC only includes years up to 2001.

B. Average Water Use Per Customer

The PD accepts the figure of 321 Ccf/year put forth by SGVWC. (PD, p.15.) However, the recorded average for 2002 was 340.3 Ccf per customer, much higher than predicted using the modified Bean method used by SGVWC. ORA recommended rejecting the results of the modified Bean method approach because it results in an unreasonably low estimate. The PD commits legal error by ignoring the requirement contained in Commission Standard Practice U-25 (Exhibit 52) that estimates generated by the Bean method must be reasonable. Clearly, ORA's method, which considered the most recent 4 year averages, produces a result that is much more accurate than the method used by SGVWC. The PD uses SGVWC's estimates that are incorrect and unreasonable compared to actual recorded data, and should be corrected.

C. Miscellaneous and Construction Revenues

The PD accepts SGVWC's estimate for Miscellaneous Revenues in the amount of $106,881 for 2003 and 2004. This finding ignores the revenue collected from the County of San Bernardino for ongoing operation and maintenance costs of Plant F10, and thus is too low. ORA's estimates of $531,751 for 2003 and $447,271 for 2004 are much closer to the actual recorded amounts because it takes this revenue into account, and is thus much more reasonable. The PD offers no justification for not including this revenue.

IV. OPERATION AND MAINTENANCE EXPENSES

A. Chemical Expenses

The PD approves SGVWC's request for chemical expenses in the test year. Although the PD does not say, the amount requested by SGVWC is $1,011,900 for test year 2004, which represents a 1,200% increase compared to the last five years. For the last five years, chemical expenses ranged from $47,067 to $105,390. The PD's increase is based on additional water flowing through the Sandhill Treatment Plant, and also chemicals needed for new wellhead treatment facilities. (PD, p.18.) However, *the Commission has not approved either of these items*. If the flawed rate base cap proposal is adopted, it is *possible* that the company will increase the capacity at the Sandhill facility and build new wellhead treatment facilities. It is unlikely, because of the rate base cap (if adopted), that the company will build all of the facilities proposed. Therefore, granting all of SGVWC's chemical expense request is inappropriate. SGVWC's chemical expenses should increase in proportion to the need created by construction of new treatment facilities. The PD states, "We adopt San Gabriel's estimate since it better reflects expected usage during the test years." (PD, p.18.) As stated above, expected usage is not currently known. Thus the PD commits legal error by granting all of the companies' request for chemical expenses for such new facilities.

B. F10 Treatment Plant Reimbursements

As discussed above, the PD fails to include reimbursements received from the County of San Bernardino for the Operation and Maintenance costs at Plant F10 as

revenue. (PD, p.18.) However, the O&M expenses for F10 are being billed to ratepayers, and since the PD does not allow an offset, the shareholders receive the benefit without having to pay for the burden. In effect, ratepayers and the County are both paying for the O&M costs of F10 – as discussed above, this is double-recovery. Based on the County's projected reimbursements for 2003 and 2004, ORA adopted the figures of $531,800 and $447,300. Strangely, the PD does not adopt these figures, claiming that they are not "revenue neutral", (PD, p.19), because ORA failed to consider that the company had O&M expenses. However, there is nothing in the record to indicate that the company excluded the O&M costs of F10 from its overall O&M budget. Therefore, to truly achieve a "revenue neutral" result, the Commission should adopt both projected reimbursement figures from the County as well as the O&M expenses for F10. The PD commits legal error by failing to treat the funds received from the County as revenue, while allowing ratepayers to pay for the O&M expenses at F10.

C. Labor Costs – New O&M Positions

The PD approves nine new O&M positions associated with speculative projects to which the company is not committed. The PD points out that "San Gabriel has not filled positions allowed in rates, and the plant for which additional personnel has been requested, is not yet built." (PD, p.19.) The PD commits legal error by approving positions without any demonstration of need based on the record – it is possible that no new positions will be needed, because it is not known yet whether SGVWC will build any new facilities. The PD then directs the company to notify the Commission through an advice letter that it has hired new personnel. As discussed above, the flawed rate base cap proposal has created this unusual blanket approval situation, and ORA recommends that each new project, and the related need for new personnel to operate such facilities, be considered on a case-by-case basis.

V. OTHER O&M AND A&G EXPENSES

A. Outside Services – Legal Expenses

The PD fails to explain why, in this account, it adopted a 10-year average, after consistently adopting 5-year averages in other accounts. ORA used a 5-year average and then excluded years that were clearly unusual or out of the trend. The PD commits factual error by claiming that "ORA offers no explanation for selectively averaging the two lowest years of recorded expense." (PD, p.21.) ORA did in fact offer an explanation – that most of the unusually high legal expenses were due to perchlorate litigation, and also the legal costs involved with SGVWC's settlement efforts with the County of San Bernardino. (Exhibit 17, pp.43-44.) Because these are non-recurring expenses, ORA believes it is inappropriate to include them in the average. The PD offers no explanation why it chose a 10-year average in this case, other than to note that it is more "reasonable".

SGVWC spent for legal expenses $150, 297 in year 1998, $14,206 in year 1999, $58,321 in year 2000, $192,892 in year 2001 and $637,134 in year 2002. The expenses in year 2002 appear to include legal charges related to perchlorate issues. Therefore, ORA used a normalized trend consisting of legal expenses in the years 1999 and 2000, and did not include years inflated by non-recurring expenses related to contamination issues.

The PD commits factual error by identifying amounts for the Estimated Year 2002, Test Year 2003, and Test Year 2004 as "non-perchlorate". (PD, p.21.) Apparently, the PD accepts the premise that SGVWC provided separate estimates for "perchlorate contamination-related issues" versus non-perchlorate legal issues. Nothing in the record supports the contention that SGVWC differentiated between the two categories of legal expenses. The PD cites to nothing in the record, and indeed there is nothing in the record, to demonstrate that these two categories of legal expenses were tracked separately. In its application, the company only provided one set of figures for outside services – legal expenses, which was the set used by ORA.

The PD directs SGVWC to provide an accounting in the next GRC of its perchlorate-related legal expenses; but commits legal error by inserting the word "may", so that the company is not actually required to provide anything.

B. Employee Pensions and Benefits

1. Business, Property, and Umbrella Liability Insurance

The PD accepts SGVWC's allocation of premiums for its umbrella liability insurance, and rejects ORA's allocation, stating, "there is no evidence of wrongdoing by the insurance broker." (PD, p.25.) SGVWC provided documentation from its insurance broker, not its insurance company, as to how the premiums were allocated, which is problematic because the broker is not an employee of the insurance company. SGVWC failed to produce the insurance providers' invoices or any other documents that could clearly indicate the allocation of the separate affiliates under this insurance policy as set by the insurance company. Each of SGVWC's affiliates under this umbrella insurance policy carries its own risk and liabilities; therefore, each should have the equitable share of the premium. ORA allocated the total premium based upon the total assets of each entity that is covered under this umbrella insurance policy. (Exhibit 17, p.42.) Based on its assets, ORA believes it is equitable that SGVWC pays 55% of the premiums for the umbrella liability. The PD requires SGVWC's customers to pay a much higher portion of premiums than its affiliates. The PD commits legal error by requiring the Fontana Division ratepayers to subsidize a portion of the liability insurance of SGVWC's affiliates.

2. Worker's Compensation Insurance

The PD commits legal error by adopting SGVWC's estimates, which are based on an assumption that all of the proposed capital projects will be built. As discussed above, there is too much uncertainty as to what projects will be built. ORA recommends maintaining currents levels, increasing only by the escalation factor.

3. Regulatory Commission Expense

The PD allows SGVWC to recover the costs of hiring expensive outside consultants, accountant Dr. Zepp and consulting engineer Wildermuth, without any evidence in the record that such outside consultants are necessary or reasonable. (PD, p.25.) The company provided no documentation to show that it considered lower-cost alternatives, or that its own accountants or engineers were insufficiently qualified to provide the technical expertise necessary to prepare this rate increase application.

4. Labor Costs – New A&G Positions

Again, the number of new administrative and general positions is dependent on whether and to what extent SGVWC is allowed to undertake an "ambitious program" of new construction. The PD commits legal error by approving four new A&G positions associated with various projects, without considering the actual need for the projects with which these positions are associated.

VI. GENERAL OFFICE

A. Officers' Salaries

The PD commits significant legal error by relying on a survey, the Employment Group survey, which *does not contain a single water utility*. (PD, p.28.) ORA based its recommendation on the salaries contained in the American Water Works Association Compensation Survey, a survey consisting of other national water utilities. It makes no sense to compare SGVWC to non-utilities, and constitutes legal error. The Commission has stated that water utilities should not be compared to companies in other industries (D.01-04-034, p.13-14; D.90-02-042, p.38). A water utility should not be compared to a non-regulated company because non-regulated industries do not benefit from recovery of the majority of their expenses through fixed cost recovery, balancing, and memorandum accounts. Therefore, data from Employers Group study should not be included in a discussion of officers' compensation. ORA's recommendation clearly reflects that SGVWC's officers' salaries are much higher than comparable water utilities.

Furthermore, the PD bases its calculation of officers' salaries on the daily time records requirements set forth in D.93-09-036[5]. However, *this decision has been superseded by subsequent decisions*. Subsequent to D.93-09-036, the Commission issued Affiliate Transaction rules to Class A water companies: California Water Service Company, D. 97-12-011, Southern California Water Company, D. 98-06-068; and Cal-American Water, D. 02-12-068. ORA recommends that the rules adopted in these other Commission decisions involving Class A water utilities be applied to SGVWC as well. SGVWC's officers provide services to out of state affiliates, thus California ratepayers could be subsidizing SGVWC's affiliates. SGVWC's Chairman is also the Chairman of the Arizona Water Company, and SGVWC's President is the Director and Assistant Secretary of the Arizona Water Company. The PD commits legal error by not requiring SGVWC to follow the existing affiliate transaction rules for water utilities.

B. New and Existing Positions in the General Office

The PD approves SGVWC's request for three new positions in its General Office, but it bases its rationale on the flawed and unsupported finding that there is "increasing complexity of regulatory requirements affecting water utilities." (PD, p.30.) There is no support in the record for this finding, and ORA is unaware that regulatory requirements are more complex today than they were at the time of SGVWC's previous rate case. For each of the positions requested, Property Manager, Accountant, and Rate Analyst, the PD impermissibly shifts the burden to ORA to prove that the positions are unnecessary, without a preliminary showing by SGVWC that the positions are in fact necessary. ORA's extensive analysis (Exhibit 17, pp.22-38) shows that for each of the new positions requested, the company has not met its burden to prove that the new positions are needed.

Similarly, ORA recommends that four existing positions be excluded, because after extensive analysis it is clear that these positions are unnecessary. ORA demonstrated that SGVWC has sufficient staffing levels to accomplish the tasks

[5] The stipulation and settlement entered into in D.93-09-036 clearly states that it is not precedent or policy.

presented – no time studies or other surveys were produced by SGVWC to show that the current positions are insufficient, or that existing positions are justified. The PD finds that SGVWC has "adequately demonstrated the need for these new positions" (PD, p.32) without any reference to the record. Over and over, (PD, pp.33-34), the PD accepts SGVWC's representations of need as "evidence", when in fact they are merely unsubstantiated claims. In effect, ORA was required to prove that the need does not exist, which is legal error.

VII. COMPONENTS OF RATE BASE

As discussed above, the proposed rate base cap makes analysis of the additions to rate base difficult, because the rate base cap approves of new capital additions to plant without a sufficient review. Many of the components of rate base, i.e., treatment facilities, wells, reservoirs, booster stations, etc. will change depending upon what the company chooses to build from Exhibit 54, the list of proposed capital projects.

A. Wellhead Treatment Facilities

The PD accepts SGVWC's false statement that "it urgently needs the restoration of lost production capacity now, so the treatment systems must be built now even though the costs have not yet been recovered from the polluters." (PD, p.35.) As discussed above, the evidence overwhelmingly shows that there is no water shortage. Thus, restoring lost production capacity is not a pressing need. Moreover, even if there were shortages, the costs of building treatment facilities (each one costing about $1.75 million – PD, p.35) are not reasonable in light of the fact that the company could consider alternative proposals to increase production, such as the Sandhill facility (PD, p.35), which might be a less expensive alternative to restoring lost capacity. The PD simply accepts the companies' assertions that treatment facilities are the only alternative without any support in the record.

B. Wells

The PD approves construction of three new wells, F51A, F51B, and F51C (PD, p.36) without considering the need for those new wells. The PD ignores the fact that two

new wells began production in 2002 at F10C and F49A, greatly alleviating the need for new capacity. (Exhibit 17, p.82.)

C. Reservoirs

The PD takes ORA to task for failing to show why historical average reservoir capacity is relevant, or why comparisons to other water utilities' storage levels are meaningful. (PD, p.37.) Again, the PD commits legal error by shifting the burden to ORA to disprove the need for new reservoirs, instead of requiring SGVWC to demonstrate why new reservoirs are needed. The PD fails to cite to anything in the record, and in fact it cannot do so since the company never produced any evidence that it needs additional water storage capacity.

D. Working Cash

The PD adopts SGVWC's estimates with regards to working cash, rejecting the disallowances recommended by ORA. However, the PD makes a fundamental legal error by adopting SGVWC's working cash estimates, because SGVWC *did not conform to the requirements of the Commission's Standard Practice U-16* to calculate working cash, or demonstrate why deviation was warranted. SGVWC used its own independent method of calculating working cash, but never identified what the method was.

Standard Practice U-16 is the standard Commission guideline for calculating working cash for ratemaking purposes. The rules are to be followed unless the party that wishes to deviate from the standard rules can demonstrate "special circumstances" that warrant deviation. The burden is on the party that wishes to deviate from the standard rules to demonstrate the special circumstances warranting such a deviation.

In Re: Application of Pacific Gas and Electric Company, 63 CPUC 2d 570, D.95-12-055, (1995), the Commission stated: "The Commission's "Standard Practices" are accounting guidelines which we have used for purposes of ratemaking. They are not rules which the utilities must follow. They are, however, rules that we will follow in developing rates unless the utility can demonstrate "special circumstances" which warrant a deviation." In this case, SGVWC made no such showing.

In Re: So. Cal. Edison Co., application to increase rates for California intrastate service, D.81919 (1973), the Commission stated: "The accounts receivable method has been used for many years and is prescribed by Commission staff's Standard Practice U-16, Determination of Working Cash Allowance. Edison was afforded an opportunity to demonstrate that the accounts receivable method was mathematically fallacious and was unable to do so. The staff's method of computing tax lag is well within the payment schedule required by the Internal Revenue Service and apparently follows the basis Edison is attempting to use. We will use the staff's method of determining working cash, revised to the reflect the revenues and expenses that we have adopted."

E. Contributions in Aid of Construction

The PD rejects ORA's exclusion from plant the costs of treatment facilities funded by third parties. (PD, p.41.) However, this is appropriate under standard accounting mechanisms. ORA excluded the funds from certain third parties (parties responsible for groundwater contamination that have funded treatment facilities, such as the County of San Bernardino) because it was accounted for in the available company cash already. It is only after the facilities have been built and transferred to the utility that the facilities are added to plant. It is legal error to allow the costs of facilities funded by third parties to be placed directly in plant.

F. Plant Retirements

The PD commits legal error by including an amount for plant retirements in Appendix A without any corresponding discussion in the text of the decision, and without any support in the record. ORA calculated a 3-year average of $453,314. (Exhibit 17, p.60.) However, Appendix A to the PD calculates only $304,700 for 2003, and $282,900 for 2004. The PD is silent on how it arrived at these numbers. The amounts used in the PD do not correspond to the amounts estimated by SGVWC either.

VIII. COSTS OF CAPITAL

The PD finds that an imputed equity ration of 60% is "reasonable and appropriate for small Class A water utilities." (PD, p.47.) The PD cites to a recent decision in Park

Water Company's GRC decision, which finds that "AVR (Park's division, Apple Valley Rancheros) has a limited source of external financing and its stock is still not publicly traded, justifying a premium ROE…" (PD, p. 47, fn. 10.) However, the Park Water Company GRC decision does not apply here, since there has been no finding that SGVWC has "a limited source of external financing". In fact, SGVWC is a financially healthy company and has not had any problems attracting capital. (Hearing Transcripts, 696:26 – 697:24.)

Although the Commission recently found that 55% was a reasonable equity ratio (D. 96-07-057) for SGVWC, the PD adopts a higher amount without any reference to evidence in the record, or any citation other than to the Park Water Company GRC decision discussed above. In effect, the PD fails to require SGVWC to meet its burden of proof on this issue, which constitutes legal error. There are no new circumstances to consider since SGVWC's previous GRC.

IX. RULE 1 VIOLATION

The PD denies ORA's motion for Rule 1 violations, finding that "San Gabriel's explanations are clear and plausible." (PD, p.59.) The PD fails to consider the significant financial effect of the "differences of opinion" (Ibid.) on rates. The Commission should carefully consider the impact of the companies' misrepresentations before so dismissively ignoring ORA's motion.

The real issue presented by ORA's Motion for an Order to Show Cause is not the credibility of a particular witness or the evidence – the real issue is: Should the Commission accept General Rate Case (GRC) applications that are sloppy, incomplete, misleading, and outright false in some cases? Under the new general rate case plan, ORA staff has a short amount of time to review GRC applications. SGVWC has submitted a GRC application that is the "poster child" for a completely inadequate showing, rife with incomplete information, full of omissions, misleading, and at times outright false. The Commission could condone such behavior by turning a blind eye towards the most egregious examples of this presented in ORA's Motion, but it should not do so. The Commission should hold companies such as SGVWC to the burden of proof required in

applications, that the company must establish by a preponderance of the evidence that each material fact is true. In the instances cited by ORA in its Motion for an OSC, SGVWC has utterly failed to do so.

For example, the company's rate increase request (40% in the first year) is based on a large increase in rate base. One of the plant items in rate base the company claimed to have spent $2.2 million on is the purchase of a tract of land and construction of a new well, at site F52. However, there was no purchase of land, there is no new construction at site F52, and to date (almost two years later) the company has not purchased the land or begun construction. Yet the company has never rescinded its request for recovery of this plant item, nor has it reduced its request for a rate increase to reflect that it never spent the $2.2 million. Should the Commission condone the knowing misrepresentation made by SGVWC that it in fact spent the money, and allow rates to increase as a result?

Another example is the millions of dollars received from the County of San Bernardino. The company seeks to recover the costs of building the treatment facility from ratepayers, even though it has already collected the money from the County. In an attempt to "hide" these financial double-dealings, the company never informed the Commission that it received these funds as "condemnation proceeds" pursuant to a lawsuit over water quality issues. Should the Commission simply turn a blind eye to the company's attempt to hide[6] the millions of dollars received from the County, and to allow the company's shareholders to collect the costs of the treatment facility ***twice***?

Finally, in an especially egregious and important misrepresentation, the company has misled the Commission by claiming that it suffers from water shortages due to the fact that 7 of its wells have been "shut down"[7]. This is simply not true – the company's

[6] SGVWC does not dispute that it failed to disclose these amounts in response to the Deficiency Letter from ORA. The Deficiency Letter specifically requested that the company disclose all "utility plant sales and/or condemnations for the last 6 years", and in response, SGVWC omitted the millions of dollars received from the County of San Bernardino. (ORA Motion, p.6.)

[7] Even if all 7 wells were shut down, this would represent about 3% of the system's total capacity, when production capacity has been increased 21% since 2001. (See Fontana Unified Opening Brief, p.8.)

chief engineer stated under oath that only 2 wells have been totally shut down. More importantly, the company has engaged in a pattern of misrepresenting its need for new water resources. Right before filing its application in 2002, the company was informing other state agencies that it does not have any water shortages. The remaining 5 wells are available in emergency situations, and although would need to be blended in order to be used, could and should be counted on when considering the overall needs of the company. Without apology or scruples, SGVWC proposes building seven new water production wells, seven booster pumping stations, six new reservoirs, related piping and equipment, and adding the necessary personnel to operate these wells and equipment. (SGVWC Opening Brief, p. 29.) In addition, SGVWC proposes constructing seven perchlorate wellhead treatment facilities at seven contaminated wells. (Ibid.) Also, SGVWC proposes building a new surface water treatment facility that would provide an additional 15 MGD per day at site F52. (Ibid.) The proposals would increase SGVWC's water production capacity to an astounding 165 million gallons per day (MGD), when its current maximum usage day is 60 MGD. Should the Commission ignore such blatant misrepresentations about water shortages, and allow the company to increase its production capacity by over 100%?

Therefore, ORA requests that the Commission consider issuing an Order to Show Cause why SGVWC should not be sanctioned for Rule 1 violations. The Commission must consider the alternatives when a company such as this one makes knowingly false misrepresentations and omissions, for the express reason of supporting astronomically high rate increases. The ratepayers could be burdened for years to come with over-production, over-supply, and the highest rates in the region[8], and ORA has not been provided with accurate, complete, or truthful information on which to base its review of the requested rate increase in this application.

[8] See City of Fontana's Opening Brief, p.9; SGVWC's rates are higher than any of the adjoining service areas.

X. CONCLUSION

For the reasons stated above, ORA believes the Commission needs to re-consider the findings set forth in the ALJ's Proposed Decision.

Respectfully submitted,

/s/ TRAVIS T. FOSS

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April 7, 2004

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing document **COMMENTS OF THE OFFICE OF RATEPAYER ADVOCATES ON THE PROPOSED DECISION OF ADMINISTRATIVE LAW JUDGE PATRICK RESOLVING GENERAL RATE CASE** in **A02-11-044**.

A copy was served as follows:

[X] **BY E-MAIL**: I sent a true copy via e-mail to all known parties of record who have provided e-mail addresses.

[X] **BY MAIL**: I sent a true copy via first-class mail to all known parties of record.

Executed in San Francisco, California, on the **7th** day of **April**, **2004**.

/s/ ALBERT HILL
Albert Hill